

CHAPTER NO. 205

SENATE BILL NO. 1869

By Herron, Fowler, Norris

Substituted for: House Bill No. 2029

By Odom, McDaniel

AN ACT to amend Tennessee Code Annotated, Title 11 and Title 66, Chapter 9, Part 3, relative to conservation easements.

WHEREAS, protection of the state's land, water, geological, biological, historical, architectural, archaeological, cultural, and scenic resources is desirable for the purposes of maintaining and preserving the state's natural and cultural heritage; and

WHEREAS, there is intense interest in assuring the maintenance of the state's natural and social diversity and health and in encouraging the wise management of productive farm and forest land; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 66-9-303(1)(A), is amended by deleting the language "Conservation easement" and substituting the following:

For purposes of easements granted before July 1, 2005, "conservation easement".

SECTION 2. Tennessee Code Annotated, Section 66-9-303(1)(B), is amended by designating the existing subdivision (1)(B) as subdivision (1)(C) and inserting following new subsection (1)(B):

(B) For purposes of easements granted on or after July 1, 2005, "conservation easement" means a non-possessory interest of a holder in real property imposing limitations or affirmative obligations on the owner of the servient estate, the owner's heirs, and assigns with respect to the use and management of the servient land, structures or features thereon, and/or activities conducted thereon, which limitations and affirmative obligations are intended to preserve, maintain or enhance the present condition, use or natural beauty of the land, the open-space value, the air or water quality, the agricultural, forest, recreational, geological, biological, historic, architectural, archaeological, cultural or scenic resources of the servient estate and is recorded in the register's office of the county in which the easement is located.

SECTION 3. Tennessee Code Annotated, Section 66-9-303, is amended by inserting the following as new, appropriately designated subsections:

(6) For purposes of conservation easements granted on or after July 1, 2005:

(A) "Holder" means a public body empowered to hold an interest in real property under the laws of the state or the United States; or

(B) "Holder" means a charitable corporation, charitable association, or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic, or open-space values of real property, assuring the availability of real property for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, or cultural aspects of real property.

(7) "Third-party right of enforcement" means a right expressly provided in a conservation easement to enforce any of its terms granted to a public body, charitable corporation, charitable association, or charitable trust, which, although eligible to be a holder, is not a holder.

SECTION 4. Tennessee Code Annotated, Section 66-9-307, is amended by deleting the section in its entirety and substituting instead the following:

§ 66-9-307

(a) An action affecting any conservation easement granted on or after July 1, 2005, may be brought by:

(1) An owner of an interest in the real property burdened by the easement;

(2) A holder of the easement;

(3) A person having third-party right of enforcement;

(4) The attorney general if the holder is no longer in existence and there is no third-party right of enforcement; or

(5) A person authorized by other law.


(b) Conservation easements granted before July 1, 2005 may be enforced by the holders and/or beneficiaries of the easement, or their bona fide representatives, heirs, or assigns.

(c) Conservation easements may be enforced by injunction, proceedings in equity, or actions at law.

SECTION 5. This act shall take effect upon becoming law, the public welfare requiring it.

PASSED: May 5, 2005


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 23rd day of May 2005


PHIL BREDESEN, GOVERNOR